

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.**

CHAMBER SUMMONS No. 1096 of 1992
IN
SUMMARY SUIT No. 2095 of 1990.

Vijaya Bank ..Plaintiff.

Vs.

Anil Jayantilal Doshi ..Defendant.

Mr S. K. Lanke, i/b Shelke & Co. Advocate
for the Plaintiff.

**CORAM: V.C. DAGA,J.
DATED: 21.11.2007.**

P.C.:-

1. Heard learned counsel for the plaintiff.
It appears from the record that the sole
defendant, Anil Jayantilal Doshi, left for
heavenly abode sometime prior to 1992. In the
year 1992 i.e. on 14.12.1992 Chamber Summons
No. 1096 of 1992 was taken out by the
plaintiff to amend the plaint and to
substitute the name of the deceased defendant
with his heirs and/or legal representatives.
The Schedule was attached to the Chamber
Summons depicting the draft amendment;
wherein, the text of the proposed amendment
was given. Material part of which reads as
under:

" To add the following before the name
of the defendant in the cause title of

the plaint: 'The heirs and legal representatives of the deceased' and substitute the word 'Defendant' by 'Defendants' in the title."

2. Perusal of the above part of the text of

the proposed amendment does not mention the names of any of the heirs or the legal representatives of the deceased. In other words, draft amendment to the Chamber Summons does not disclose name of the heirs and/or the legal representatives.

3. It appears that this Court had permitted

the plaintiff to serve the legal representatives of the deceased through newspaper publication by an order dated 23.9.1994. From the affidavit placed on record, it appears that the substituted service by way of publication was sought to be effected by issuing publication in the "Mumbai Samachar" dated 10.10.1994 mentioning the name of the sole (deceased) defendant. Name of the legal heirs are not to be found either in the Chamber Summons or in the newspaper publication. The affidavit duly affirmed by the Registered Clerk of the plaintiff's Advocate dated 19.10.1994 is sought to be produced on record today i.e. on 21.11.2007, practically, after lapse of more than 13 years. The negligence on the part of the

plaintiff at every stage is apparent on the face of record for which there is hardly any justification.

3. Having examined the Chamber Summons and the Schedule annexed thereto and considering the omissions to mention the names of heirs and/or the legal representatives of the deceased Chamber summons cannot be granted.

Same is, therefore, rejected being defective.

4. Needless to mention that the suit against the deceased defendant has already been abated, right in the year 1992, itself.

In this view of the matter, suit is dismissed

as "abated" with no order as to costs.

(V.C. DAGA,J)